



POLICE DEPARTMENT

August 5, 2008

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Craig Baco
Tax Registry No. 932286
104 Precinct
Disciplinary Case No. 83271/07

The above-named member of the Department appeared before me on April 10, 2008, charged with the following:

1. Said Police Officer Craig Baco, assigned to the 104 Precinct, on or about September 5, 2006, at approximately 1517 hours, in the vicinity of 79-01 Broadway, Queens County did wrongfully engage in conduct prejudicial to the good order, efficiency, and discipline of the Department, to wit: said officer, while assigned to guard a prisoner at the hospital, failed to safeguard said prisoner's property, a diamond watch, resulting in its loss.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT

The Department was represented by Michelle Alleyne, Esq., Department Advocate's Office, and the Respondent was represented by Craig Hayes, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Not Guilty.

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SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Police Officer James Petruzzi, Joba Gabriel, Police Officer Janet Fox, and Sergeant Susann Kimmelman as witnesses.

Police Officer James Petruzzi

Petruzzi, a three-and-a-half-year member of the Department, is currently assigned to the 104 Precinct. On September 5, 2006, he and the Respondent were partners and patrolling on scooters. At approximately 2:13 p.m. that day, they responded to a radio run involving a dispute at [REDACTED]. On their way to the location, the job was changed from a dispute to a burglary in progress. Upon their arrival at the scene, Petruzzi heard a gunshot, and a man (subsequently identified as Gabriel [REDACTED]) exited the building. Gabriel, who was carrying a firearm, had been shot in the leg and was yelling, "She is crazy, she shot me." The Respondent and Petruzzi took the gun away from Gabriel, and Gabriel was placed under arrest. The officers called an ambulance to the scene, and Petruzzi searched Gabriel. Petruzzi testified that he found a knife, a screwdriver, two cell phones, a cell phone case, and keys on Gabriel's person. After Gabriel was removed to the hospital, Petruzzi returned to the station house to start the arrest paperwork. He brought Gabriel's property with him for vouchering. Petruzzi stated that he did not take any jewelry off of Gabriel. He further stated that even if Gabriel had been wearing jewelry that day, he (Petruzzi) would not have removed the jewelry.

Petruzzi testified that while he was at the station house, the Respondent went to

the hospital to safeguard Gabriel. When the Respondent returned to the station house later in the day, he brought with him the bloody jeans that Gabriel had been wearing. According to Petruzzi, the Respondent did not bring back any other property, and no other property from Gabriel was vouchered. Gabriel's wife, Joba, came into the command that day to retrieve the prisoner's property. Petruzzi gave to Joba the car keys, cell phones, and cell phone holder that he had removed from Gabriel. Joba did not ask about any additional property.

The next day Joba returned to the command and asked about a watch. Joba told Petruzzi that Gabriel had an expensive watch that she had given him as a gift. Petruzzi informed Joba that he never saw a watch on Gabriel and that he would not have removed a watch from the prisoner. He advised Joba to ask hospital personnel about the watch because they also remove and safeguard property. Petruzzi testified that when a police officer is dealing with a prisoner that requires hospitalization, the officer removes from the prisoner only necessary property, such as weapons or arrest evidence. He explained that cell phones are also vouchered because prisoners are not free to make calls. He stated that other personal property, such as clothing and jewelry, would not be vouchered by a police officer. According to Petruzzi, he has never seen an officer take possession of jewelry unless it was arrest evidence.

On cross-examination, Petruzzi testified that Gabriel had lied to the police. He explained that Gabriel originally accused a woman of shooting him but later confessed to shooting himself. Petruzzi also learned that Gabriel had been charged federally with mortgage fraud. He reiterated that he did not notice a watch on Gabriel at the time of the arrest, and Joba did not mention a watch until their second encounter. Petruzzi stated that

while they were waiting for the ambulance to arrive at the crime scene, he asked Gabriel something to the effect, "Who do you think you are, Puff Daddy?" Petruzzi explained that Gabriel was wearing a pair of diamond-encrusted sunglasses, and he (Petruzzi) was trying to calm the nervous and injured prisoner down by making conversation with him.

Upon questioning by the Court, Petruzzi testified that he has never observed hospital personnel take jewelry from a prisoner.

Joba [REDACTED]

Joba is currently employed as a secretary. She and Gabriel have been married for 17 years and have three children together. She testified that while she lives with the children, Gabriel "comes and goes . . . [h]e stays some days, he leaves some days." She stated that when she arrived home from work on September 5, 2006, her brother informed her that Gabriel had been shot and arrested. According to Joba, her first thought was that Gabriel had been involved in a robbery. She explained that Gabriel wore an expensive watch, and she was always worried that he would be robbed for the watch. Joba asked her brother if Gabriel was wearing the watch when he left the house that morning. According to Joba, her brother replied, "Yes. He never takes that watch off. Wherever he goes, he always takes his watch." Joba had given Gabriel the watch as a gift. She stated that she paid \$17,000 for it at Lucky Jewelry on Fordham Road in the Bronx. [Department's Exhibit (DX) 4 is a copy of a jewelry store receipt, dated June 20, 2005. The receipt indicates a series of installment payments totaling an even \$17,000, but there is no indication that this is an actual sales receipt as no calculation of sales tax is indicated.]

One of Gabriel's friends informed Joba that Gabriel had been shot at his girlfriend's house. Joba was aware that Gabriel had been involved with another woman. In fact, Gabriel used to live with the other woman, but he intended to break up with her. According to Joba, she went to the 104 Precinct station house, where she specifically asked Petruzzi, "Where is my husband's watch?" Petruzzi informed her that only money and Gabriel's car had been vouchered. According to Joba, she told Petruzzi that Gabriel had a very expensive watch, and Petruzzi responded that Gabriel should still have the watch on him. The following day, Joba returned to the station house, where she received a pass to see Gabriel in the hospital. Joba stated that when she asked Gabriel about the watch, Gabriel informed her that the watch was in a manila envelope in the hospital room closet. Joba proceeded to look in the envelope. Gabriel's glasses and some of his other property were in the envelope, but the watch was not. Joba informed Gabriel that the watch was missing, and Gabriel told her that he saw "the nurse put it in the manila envelope and handed it over to the cop, to the arresting officer." Gabriel also told Joba that it was the Hispanic arresting officer who had placed the envelope in the closet.

Joba asked the police officer who was safeguarding Gabriel at the time about the watch, but the officer informed her that he had just started his tour.¹ Joba then asked Gabriel's nurse about the watch. The nurse told Joba that she placed the watch along with Gabriel's other property inside the manila envelope and gave the envelope to the police officer. Joba went back to the station house to ask again about the watch. She was told again that no watch had been vouchered. At that point, Joba returned home and

¹ The Respondent was present at the hospital when Gabriel was first brought to the hospital on September 5, 2006. After the Respondent's tour ended that day, one or more officers spent time safeguarding Gabriel in his hospital room. The police officer that Joba questioned about the watch the day after Gabriel's arrest was not the Respondent.

called the Internal Affairs Bureau (IAB) to initiate an investigation. She explained, "I called IAB because my husband told me that the cop had the watch in the manila envelope. The reason why I called IAB was because I know my husband wouldn't lie about this watch. I know my husband had the watch on him. The nurse told me she put the watch in there."

On cross-examination, Joba testified that Gabriel would tell her whenever he was in a relationship with another woman. She reiterated that Gabriel told her he saw the nurse give the manila envelope to the police officer and the officer put the envelope in the closet. Gabriel never told Joba that he specifically saw the nurse give the officer the watch. It was the nurse who told Joba that the watch was in the envelope. Joba did not know if the nurse ever informed the officer that there was a watch in the envelope. When Joba looked in the envelope for the first time, she and Gabriel were alone in the hospital room. Joba could not recall if there was any writing on the manila envelope.

When Joba called IAB, she stated that the watch cost approximately \$20,000. Although she had recently bought the watch in June of the previous year, she did not recall at the time the exact price that she had paid. She explained that she could not recall the exact price because she paid for the watch in installments. Only when she found the jewelry store receipt did she realize that the watch actually cost \$17,000. She did not call IAB back to inform them of the actual watch price, but she did at some point bring a copy of the receipt to IAB.

Gabriel is currently incarcerated as a result of the September 5, 2006 incident. Joba testified that Gabriel used to be a drug dealer and was incarcerated before for felony drug sales. According to Joba, Gabriel has never been charged with mortgage fraud.

On redirect examination, Joba testified that the brand of watch was Breitling. According to Joba, the watch was white gold all over, with a big face, and diamonds on top of it.

Police Officer Janet Fox

Fox, a four-year member of the Department, is currently assigned to the 104 Precinct. She testified that on September 5, 2006, she was assigned to relieve the Respondent at [REDACTED] Hospital. Upon her arrival at the hospital, the Respondent and Gabriel were in the holding room. She explained that the holding room is a small room outside of the emergency room. The holding room has several beds in it, and there were other patients in the room at the time. Fox and the Respondent exchanged handcuffs and paperwork. Fox did not recall being given any property or a manila envelope, and she did not recall the Respondent telling her about property or an envelope that belonged to Gabriel. Nurses routinely checked on Gabriel. Fox did not recall observing any nurse remove property from Gabriel. When her tour ended, a police officer from another command relieved Fox. She did not recall having any conversation with Gabriel.

Upon questioning by the Court, Fox testified that she has never taken property from a hospitalized prisoner. She stated that police officers are not required to take jewelry from hospitalized prisoners, and she has never been instructed to do so.

Sergeant Susann Kimmelman

Kimmelman, a nine-and-a-half-year member of the Department, is currently assigned to IAB Group 26. She investigated Joba's complaint concerning Gabriel's missing watch. During the course of the investigation, Kimmelman had the opportunity to speak with Joba. Joba told her that Gabriel's watch was worth approximately \$20,000, and Joba gave her the jewelry store receipt to confirm the value.

Kimmelman also spoke with Gabriel. Gabriel told her that the Respondent escorted him to the hospital on September 5, 2006. He also told her that while he was waiting in the triage area, he was instructed that his external property needed to be removed before an X-ray or sonogram could be conducted. Gabriel told Kimmelman that a nurse named [REDACTED] Koenig removed the property from his person. He also told her that his watch was placed in a plastic bag, which was in turn placed in an interoffice envelope, along with his glasses and a rosary. Gabriel told Kimmelman that because he was in and out of sleep during the night, he was not certain who had possession of his property or how the envelope ended up in his closet. Kimmelman did not ask Gabriel if he ever saw the Respondent holding the envelope. According to Kimmelman, however, she did recover from the hospital police photographs of the Respondent walking around the hospital with what appears to be an envelope. [DX 5 is a copy of four security camera photographs. Two of the photographs depict the Respondent walking next to a gurney at 3:17 p.m. Gabriel is on the gurney. The two other photographs depict the Respondent alone at 4:01 p.m. There is something in the Respondent's hand in all of the photographs, but it is not clear exactly what he is carrying.]

Kimmelman also had the opportunity to speak with Koenig. Koenig told her that

she placed the watch inside a biohazard bag because it had blood on it, and she then placed the biohazard bag inside a manila envelope with the rest of Gabriel's property. To Kimmelman's knowledge, Koenig did not write anything on the envelope. Koenig told Kimmelman that she asked Gabriel if she could leave the property with him and if the Respondent could watch it. Gabriel told Koenig that the Respondent could watch the property. Gabriel was alert at the time. When this transfer of property took place, Koenig, the Respondent, and Gabriel were in the emergency room. Gabriel was on a gurney, and Koenig placed the manila envelope next to him on the gurney. Kimmelman did not ask Koenig if the Respondent was aware of what property was placed in the envelope. Kimmelman testified, that Koenig "didn't make a direct statement directly to me that he (Respondent) was aware" of what was being put in the bag. "She has a written statement. I didn't ask her that directly when I interview[ed] her." According to the written statement provided by Koenig, the Respondent acknowledged the watch and also noted that he asked Gabriel something to the effect of, "Are you P. Diddy with a watch like that?" Koenig described the watch to Kimmelman as diamond studded on the face.

Kimmelman testified that she has had experience safeguarding hospitalized prisoners, and she has been entrusted to safeguard prisoner property. She stated that she has usually vouchered this property. She testified that a police officer assigned to safeguard a hospitalized prisoner is responsible for safeguarding all of that prisoner's property, whether or not the property is evidence. Kimmelman stated that the items in the manila envelope should have been accounted for somehow. The Respondent brought back from the hospital and vouchered Gabriel's bloody jeans, but he did not bring back

any of the property that was in the envelope. According to Kimmelman, the property in the envelope should have stayed in the Respondent's possession until he got back to the command. At that point, according to Kimmelman, the Respondent should have signed over the property to the arresting officer or prepared a voucher himself.

Kimmelman testified that Fox was the first officer to relieve the Respondent at the hospital. In an interview with Fox, Kimmelman learned that the Respondent never told Fox about Gabriel's property. Fox was relieved by a Police Officer Piccolo. Piccolo did not have any knowledge of Gabriel's property. While Piccolo took meal, he was relieved for an hour by a Police Officer Defreitas. Defreitas was not informed of Gabriel's property. Kimmelman stated that no officer who safeguarded Gabriel after the Respondent was entrusted with prisoner property or knew that there was property belonging to Gabriel in the hospital room.

[Department's Exhibit (DX) 1 and 1A are the tape and transcript of Piccolo's June 1, 2007 Official Department Interview. In the interview, Piccolo stated that she relieved Fox at the hospital on September 6, 2006. Piccolo did not take anything belonging to the prisoner, she did not discuss property with the prisoner, and Fox did not tell her anything about prisoner property. DX 2 and 2A are the tape and transcript of Defreitas' June 11, 2007 Official Department Interview. In the interview, Defreitas stated that he relieved Piccolo while Piccolo took meal on September 6, 2006. Defreitas did not take a watch from the prisoner, and Piccolo did not tell him anything about prisoner property. DX 3 and 3A are the tape and transcript of a Police Officer Jordan's June 11, 2006 Official Department Interview. In the interview, Jordan stated that he relieved an Officer Prolow at Elmhurst General Hospital on September 6, 2006. Jordan did not take any property

from the prisoner, and Prolow did not tell him anything about prisoner property. At some point during his tour, the prisoner's wife came to visit. The wife did not advise Jordan that she was taking property with her when she left the hospital.]

On cross-examination, Kimmelman testified that she did not think it was important to ask Koenig if the Respondent knew the watch was in the envelope. Kimmelman has never seen the envelope, but she stated that there is no indication that Koenig wrote on the envelope what she placed inside. According to Kimmelman, it did not really matter what was in the envelope. She explained that regardless of what was placed in the envelope, the Respondent should have taken the envelope back to the station house and vouchered the property for safekeeping.

Patrol Guide section 210-02 is the procedure that deals with hospitalized prisoners. Kimmelman conceded that at no point in the six-page section does it state that all prisoner property must be brought to the command for safekeeping. Paragraph eight of the section lists property that should be delivered to the desk officer. The list consists of property that is unlawfully carried, required as evidence, lawfully carried but dangerous to life or would facilitate escape, can be used to deface or damage property, Department-issued press cards, auxiliary police shield and identification cards, and pistol licenses. Kimmelman conceded that neither the watch nor any of the other property that was placed in the envelope by Koenig fell into the categories listed above. Kimmelman stated that, therefore, none of the property in the envelope needed to be brought to the desk officer, and the Respondent did not violate this Patrol Guide procedure.

Kimmelman further stated that this procedure is really about safeguarding prisoners, not prisoner property. Although the procedure also dictates that a police officer should bring

to the desk officer an itemized list of personal property except clothing which is retained by the hospital, the Respondent was not charged with failing to provide an itemized list.

Kimmelman testified that Patrol Guide section 208-03 is probably one of the main procedures dealing with property. It is entitled "Arrests – General Processing."

Paragraph eight of the section lists property that must be removed from a prisoner.

Kimmelman conceded that, as with section 210-02, none of the property that was placed in the envelope by Koenig fell into the categories listed in section 208-03. The

Respondent, therefore, did not violate this Patrol Guide procedure. [Respondent's

Exhibit (RX) A consists of copies of Patrol Guide sections 210-02 and 208-03.]

Kimmelman stated that, nevertheless, whenever property is placed in an officer's possession, it is the officer's responsibility to safeguard the property. According to Kimmelman, there is a Patrol Guide procedure that dictates that any property that comes into the custody of the Department having a value of more than one cent must be vouchered. The Respondent was not charged with failing to voucher the items in the envelope.

In a written statement that Koenig provided to the Department, Koenig wrote that she placed Gabriel's watch in the clear plastic bag, the Respondent placed the plastic bag in the manila envelope, and she placed the envelope on Gabriel's stretcher. [DX 6 is a copy of Koenig's written statement.] On September 8, 2006, Koenig was interviewed by Detective Cheryl Turrentine of the New York City Health and Hospital Corporation. Turrentine wrote in her summary of the interview that, according to Koenig, she (Koenig) placed the watch in the bag and then placed the bag at Gabriel's side. [RX B is a copy of Turrentine's interview summary.] According to this summary, Koenig did not say

anything about ever giving the Respondent the envelope. Kimmelman testified that when she interviewed Koenig, Koenig's description of the incident was consistent with Turrentine's summary. In other words, Koenig did not tell Kimmelman that she ever gave Gabriel's property to the Respondent. [DX 7 is a copy of a worksheet prepared by Kimmelman, summarizing her December 2, 2006 interview with Koenig.] Kimmelman testified that when Gabriel took his watch off, he was on a gurney in the emergency room of a busy hospital. Kimmelman stated that she is not certain how long Gabriel's property sat on the gurney.

On redirect-examination, Kimmelman testified that she conducted two Official Department Interviews with the Respondent. In the first interview, the Respondent stated that the bloody jeans were the only property belonging to Gabriel that he took possession of. Kimmelman testified that when she asked the Respondent in the second interview if he was aware of property being turned over to him by Koenig, the Respondent stated that "his recollection was based on what he was told from his attorney, but he had no independent recollection."

Upon questioning by the Court, Kimmelman testified that paragraph four of Patrol Guide section 210-02 states that a police officer who takes a prisoner to the hospital should "search prisoner's personal clothing, after removal by hospital personnel, for weapons, evidence, or contraband." Paragraph five states that the officer should "give hospital authorities receipt for property received," and paragraph six states that the officer should "enter in Activity Log list of property removed and any information necessary to process arrest." Kimmelman testified that this list should contain all property removed from the prisoner, not just contraband. Kimmelman further testified that Patrol Guide

section 218-30 also comes into play when non-contraband property is removed from somebody, and section 218-01 enumerates the general invoicing procedure. [DX 6 consists of copies of Patrol Guide sections 218-01 (Invoicing Property – General Procedure) and 218-30 (Invoicing Property taken From a Person’s Possession).]

On recross-examination, Kimmelman testified that Gabriel’s watch was not a weapon, evidence, or contraband. She conceded that while Patrol Guide section 218-01 deals with how property should be handled when it is taken into police custody, the section says nothing about which property should or should not be taken into custody. The only Patrol Guide section that the Respondent has been charged with violating is 203-10, for engaging in conduct prejudicial to the good order and efficiency of the Department. He has not been charged with any of the property-related procedures discussed above. According to Kimmelman, the Respondent should have either safeguarded Gabriel’s property or vouchered it. Kimmelman stated that in neither the summary of her interview with Koenig nor Turrentine’s interview summary was there any indication that the Respondent was told about the watch.

On further redirect examination, Kimmelman explained that when she said the Respondent could have safeguarded the property instead of vouchering it, she meant that the Respondent could have watched the property, documented it in his Activity Log, and transferred the property to whichever officer relieved him at his end of tour. On the other hand, the Respondent could have brought the property back with him to the command and vouchered it.

The Respondent's Case

The Respondent testified in his own behalf.

Respondent Police Officer Craig Baco

The Respondent, a five-year member of the Department, is currently assigned to the 104 Precinct. He testified that at in the afternoon of September 5, 2006, he and Petruzzi responded to a burglary in progress. Upon their arrival at the scene, Gabriel stumbled out of the building bleeding from the leg and with a gun in his waistband. The officers removed the gun from Gabriel, who was then transported by ambulance to [REDACTED] Hospital. While in the emergency room, medical personnel treated Gabriel behind a curtain. The Respondent stood outside of the curtained area. At one point, Gabriel needed to be transported to another area of the hospital for X-rays or a sonogram. The Respondent testified that as he followed Gabriel out of the emergency room, a nurse gave him a manila envelope and stated, "Here is the rest of [Gabriel's] stuff." The Respondent stated that when he looked in the envelope, he saw a baseball cap, sunglasses, and a rosary. The Respondent held the envelope while Gabriel was in the X-ray room. When Gabriel returned to the emergency room, the Respondent presented him with the envelope. Gabriel was on a gurney at the time, and his sneakers were underneath the gurney. According to the Respondent, Gabriel told him to place the manila envelope underneath the gurney with the sneakers. The Respondent did not have any further contact with the envelope after he placed it under the gurney.

The Respondent testified that he did not see the nurse actually place Gabriel's property in the envelope, the envelope was unsealed, and it did not have any writing on it.

After Gabriel returned to the emergency room, he continued to receive medical treatment behind a curtain. The Respondent remained in the room, but he could not see what was going on behind the curtain. Because Gabriel's bloody jeans were evidence, the Respondent retained possession of them. The jeans were placed in a plastic bag, and the Respondent brought the bag back with him to the command. The Respondent stated that if there are photographs of him walking in the hospital with something in his hand, it was the jeans. The Respondent was relieved by Fox at 4:30 p.m. According to the Respondent, nobody ever mentioned a watch to him while he was in the hospital with Gabriel.

Upon questioning by the Court, the Respondent reiterated that he had Gabriel's bloody jeans in his possession the entire time. He stated that the photographs taken at 3:17 captured him and Gabriel on the way to the X-ray room. The Respondent believed that in addition to the jeans, he also had the manila envelope in his hand at that time. The Respondent stated that the photographs taken at 4:01 p.m. captured him on the way back to the emergency room, and he most likely still had the manila envelope in his possession. According to the Respondent, he did not see a watch when he looked in the envelope.

On cross-examination, the Respondent testified that he did not recall seeing a hat, rosary, or watch on Gabriel on the way to the hospital. He did, however, recall the sunglasses. The Respondent did not know who removed the hat, sunglasses, and rosary from Gabriel's person. He did not know the name of the nurse who gave him the envelope, and he did not document the property. He conceded that his recollection of the incident is "not necessarily the best." He stated that he never talked to Gabriel about a

watch, and he at no point referred to Gabriel as "P. Diddy." According to the Respondent, Petruzzi made a remark about P. Diddy in reference to Gabriel's sunglasses. He testified that he did not tell Fox about the property under the gurney. He explained that he did not do so because the property was already back in Gabriel's possession and also because he did not feel the property was significant. The Respondent stated that Gabriel was given some sort of painkiller, but remained conscious. According to the Respondent, it is not true that the nurse placed a watch in the envelope in his presence.

FINDINGS AND ANALYSIS

The Respondent has been charged with engaging in conduct prejudicial to the good order, efficiency, and discipline of the Department in that he failed to safeguard a hospitalized prisoner's diamond watch, resulting in its loss. To begin with, there is a question surrounding whether or not there was even a watch in the first place. Petruzzi testified that he did not see a watch on Gabriel at the time of arrest, and the Respondent testified that he did not see a watch when he looked in the envelope of prisoner property that he received from the nurse. Although Joba, Gabriel, and Koenig all claimed that there definitely was a watch involved that day, the Court finds the evidence that these three parties provided to be weak. Of the three, Joba was the only one to appear at trial. Unfortunately for the Department, she was not present at the time of Gabriel's arrest nor was she present in the hospital on September 5, 2006. Although she provided evidence that she had once purchased a very expensive watch, she was not present to observe what happened to the watch while in the hospital or to know if Gabriel was even wearing the watch that day.

Unlike Joba, Gabriel and Koenig were directly involved in the incident.

Unfortunately neither one of them appeared to testify at trial. Gabriel did not appear because he is currently incarcerated for the criminal conduct that he committed on the day of the incident. In addition, there are no statements made by Gabriel in evidence that might be able to shed light on the nature and whereabouts of the watch.

While the evidence implied that this valuable watch went missing at the hospital there is no testimony or hearsay statement from Gabriel informing the Court what if any watch he was wearing at the time of his arrest, whether the watch was returned to him with other property in the envelope and if he has seen the watch since he was in the hospital. Gabriel is the actual complainant in this case and his testimony or at a minimum his hearsay statement is essential to identify the watch and confirm that it is in fact missing.

This Court is also mindful that even if Gabriel did testify he lied to the police when he initially claimed that he had been shot by a woman inside the house when, in fact, he had shot himself. In addition, Joba conceded that Gabriel used to be a drug dealer and has previously been incarcerated for felony drug sales.

As for Koenig, although several of her out-of-court statements came into evidence via Kimmelman, these statements were inconsistent with each other. In a written statement that Koenig prepared for the Department, she claimed that the Respondent handled Gabriel's property before she placed it on the gurney at Gabriel's side. Meanwhile, in neither Kimmelman's interview with Koenig nor the interview summary prepared by Health and Hospital Corporation Detective Turrentine was there any mention of the Respondent ever personally handling Gabriel's property. Inconsistency on such a

pivotal detail diminishes the weight that the Court can give any of Koenig's hearsay statements.

The Court's real concern, however, is whether the Respondent did what he was supposed to do when he came into possession of Gabriel's property, whether the watch was in the envelope or not in the envelope. The Respondent conceded that Gabriel's nurse did, in fact, hand him an envelope of Gabriel's property. All of the parties involved agree that the property was removed from Gabriel in preparation for X-rays or a sonogram. The Respondent testified that he held the envelope while Gabriel was in the X-ray room. The Respondent's testimony was consistent with the security camera photographs, which show the Respondent holding something in his hand. The Respondent stated that the photographs taken at 3:17 p.m. show him holding the envelope as he and Gabriel made their way from the emergency room to the X-ray room, and the photographs taken at 4:01 p.m. show him on the way back to the emergency room with the envelope still in his hand. According to the Respondent, he gave the envelope to Gabriel when Gabriel returned to the emergency room, thereby returning the property to its rightful owner. The Department did not present any evidence to discredit this straightforward account provided by the Respondent.

On direct examination, Kimmelman testified that the Respondent should have brought Gabriel's property back to the command and either signed it over to the arresting officer or vouchered it himself. On cross-examination, she testified that the Respondent should have vouchered the property for safekeeping. On recross-examination, she testified that the Respondent should have either safeguarded the property or vouchered it. At one point, Kimmelman testified that there is a Patrol Guide procedure that dictates that

any property that comes into the custody of the Department having a value of more than one cent must be vouchered. In the four Patrol Guide procedures placed into evidence, however, there is no suggestion that such a policy exists. Based on Kimmelman's testimony, it is simply not clear what it is that she expected the Respondent to have done differently.

For clarification, the Court looks to Patrol Guide section 210-02, the section that deals with the processing of hospitalized prisoners. Although Kimmelman testified that this section is for the safeguarding of prisoners, not their property, paragraph eight of the section specifically enumerates the eight types of property that must be removed from a hospitalized prisoner and brought back to the command. The list consists of property that is unlawfully carried, required as evidence, lawfully carried but dangerous to life or would facilitate escape, can be used to deface or damage property, Department-issued press cards, auxiliary police shield and identification cards, and pistol licenses. As even Kimmelman conceded, none of the prisoner property that was given to the Respondent in the envelope (whether or not there was a watch) fell into the categories listed above. In contrast, Gabriel's knife, screwdriver, cell phones, and bloody jeans did fall into these categories and were, thus, properly vouchered that day by either Petruzzi or the Respondent.

The Respondent, it must be noted, has not been charged with violating Patrol Guide procedure 210-02. In fact, he has not been charged with violating any of the property-related procedures found in the Patrol Guide. All that he has been charged with is a violation of section 203-10, the section pertaining to "conduct prejudicial to the good order, efficiency, and discipline of the Department." According to the evidence, the


Respondent properly safeguarded Gabriel's property while Gabriel was in the X-ray room and then returned the property to Gabriel afterwards when he was alert and fully capable of caring for his own property. If anything went missing from the envelope after that point, the Respondent was no longer responsible for it.

Accordingly, the Respondent is found Not Guilty as charged.

Respectfully submitted,


John Grappone
Assistant Deputy Commissioner – Trials

APPROVED

DEC 29 2008

RAYMOND W. KELLY
POLICE COMMISSIONER